IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.17986 OF 2006
AND
M.P.NOS.1 AND 2 OF 2006

ICICI Bank Limited,
rep. by its Chief Manager,
9th Floor,
West Wing,
93, Santhome High Road,
Chennai-600 028 .. Petitioner

Vs.

1.The Custodian,
Office of the Custodian
Special Court (TORTS) Act, 1992,
Banking Division,
Department of Economic Affairs,
Ministry of Finance,
Government of India,
3rd Floor, Bank of Baroda Bhavan,
16,Parliament Street,
New Delhi-110 001.
2.M/s.Alsa Marine & Harvest Ltd.,
New No.T/23, 1st Floor,
4th Main Road,
Anna Nagar,
Chennai-600 040.
3.State Bank of India,
Stressed Asset Management Branch,
5th Floor,
New No.157-A, Anna Salai,
Chennai-600 002.
4.V.Vijayakumar,
Manager,
Punjab National Bank,
Kancheepuram Branch,
514-515, Gandhi Road,
Kancheepuram-631 501 .. Respondents

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This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, forbearing the first respondent from proceeding with the auction of the landed property situated at S.Nos.343 and 358, Vilambur Kuppam, Vilambur Post, Cheyyur Taluk, Kancheepuram District, Tamil Nadu, admeasuring 5.9725

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acres scheduled to be held on 20.06.2006 pursuant to the publication made in the Chennai Edition of New Indian Express, dated 3.6.2006.

For Petitioner : Mr.A.L.Somayaji,Senior Counsel
for Mr.A.Govindasamy
For Respondents: Mr.A.S.Vijayaraghavan

ORDER

Seeking writ of mandamus, the petitioner Bank has filed this writ petition to forbear the first respondent from proceeding with the auction of the landed property situated at S.Nos.343 and 358, Vilambur Kuppam, Vilambur Post, Cheyyur Taluk, Kancheepuram District, Tamil Nadu admeasuring 5.9725 acres scheduled to be held on 20.06.2006 pursuant to the publication made in the Chennai Edition of New India Express dated 3.6.2006.

2.The affidavit filed in support of the petition and also the counter affidavit are perused. The court heard the learned counsel on either side.

3.The case of the petitioner in short is that the second respondent was sanctioned from the petitioner Bank the term loan as mentioned in the petition; that the second respondent had also availed credit facilities from the State Bank of India in the form of Rupee Term Loan of Rs.819.00 lakhs and Working Capital Limit of Rs.1940.00 lakhs; that in order to secure the above facilities, the second respondent has mortgaged its properties on 31.7.1998, namely factory land and building situated at Kolkata, Andhra Pradesh and Tamil Nadu by way of Equitable Mortgage by deposit of original title deeds with the Secured Lenders by way of pari passu first charge in favour of Secured Lenders; that the second respondent had also created equitable mortgage in respect of its properties, namely the land situated in S.Nos.343 and 358, Vilambur Kuppam, Vilambur Post, Cheyyur Taluk, Kancheepuram District, admeasuring 5.9725 acres in favour of the Secured Lenders, namely the petitioner Bank and the State Bank of India; that since the second respondent was unable to meet the commitments, the Company made a reference to the BIFR, as a sick company; that accordingly, the petitioner Bank was appointed as Operating Agency by BIFR to submit the rehabilitation package; that as there was no scope for rehabilitation, BIFR, vide order, dated 25.8.2003, issued show cause notice for winding up of the company in Case No.421 of 2000; that the second respondent preferred a writ petition, challenging the order of the BIFR; that in the meanwhile, interim applications were filed and they were also pending; that the second respondent also filed WPMP, seeking permission to sell the farm land measuring 85.85 acres situated at Uthukur Village, Vidavalur Mandalam, Kovur Taluk, Nellore, Andhra Pradesh and also the factory situated at Plot No.E-37, Industrial Estate, Podalakur Road, Nellore; that the High Court has also granted permission on 21.9.2004 to sell the land and also the factory building with a direction to deposit the entire sale proceeds with the Banks for appropriation; that the farm land could not be sold; that the factory land and building have been sold and the entire sale proceeds were actually deposited; that further, the second respondent filed another WPMP, seeking permission to sell the factory land measuring 0.5875 acres situated at West Bengal; that permission was granted and accordingly, the properties were sold and the sale proceeds were deposited; that while the matter stood thus, the second respondent has also filed another WPMP, seeking

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permission to sell the land and building situated at Beach Road, Bheemanipattinam, Visakhapatnam; that a public notice has been published in the Chennai edition of New Indian Express that the properties situated in S.Nos.343 and 358, Vilambur Kuppam, Vilambur Post, Cheyyur Taluk, Kancheepuram District, measuring 5.9725 acres, which property had already been mortgaged in favour of the secured lenders, were to be sold in a public auction; that from the public notice, it is stated that the Special Court has appointed Punjab National Bank, being the 4th respondent, to conduct the auction scheduled for 20.6.2006 through the first respondent custodian and that at this juncture, the petitioner has brought forth this writ petition seeking relief as one asked for.

4.The only contention put forth by the learned counsel for the petitioner is that the properties, which are now sought to be sold, pursuant to the order of the Special Court through the custodian, if allowed to be done so, the entire interest of the petitioner Bank would be jeopardised; that actually the properties, which are sought to be sold, are actually the subject matter of equitable mortgage created by the second respondent in favour of the petitioner herein; that when the attachment order was passed by the Special Court, there is no provision is made in respect of the liability of the second respondent; that so far as the petitioner was concerned, the attachment which has been made was outside the purview of the matter and without jurisdiction for the reason that the agreement of Hypothecation and Hire Purchase was entered on 20.02.1991, which is prior to the notified period, namely 1.4.1991 and 6.6.1992 and under these circumstances, the attachment, which has been made, is illegal and hence, the public auction for the sale of the property by the first respondent should not be allowed to be done and hence, it has got to be stopped and for that purpose, this writ petition has been brought forth.

5.The court heard the learned counsel for the respondents. According to him, in a proceedings pending on the file of the Special Court, Mumbai in M.P.No.104 of 1999 E.A.No.94 of 2005, the attachment has been made in respect of the property in question. As per the order, the property was to be sold by the first respondent, custodian, who was appointed by the Special Court and under these circumstances, no question of stopping the respondents, including the first respondent, from conducting auction for sale would arise, since the first respondent is acting pursuant to the order of the Special Court; that if really, the petitioner is aggrieved by such an order of attachment either, or for the auction sale, it is for the petitioner to move the very Special Court for necessary relief; that so long as the attachment order is in force and the auction sale is scheduled to take place pursuant to the attachment order, no question of quashing or stopping the sale would arise; that once the order has been passed by the Special Court, Mumbai in exercise of the jurisdiction, no question of making any application before this court either, or stopping or quashing the proceedings would arise and under these circumstances, the writ petition itself is misconceived and hence, it has got to be dismissed.

6.After careful consideration of the submissions made, the court is of the considered opinion that the writ petition requires a very short order, as follows:

The case of the petitioner in short is that the properties, which are now brought for sale by the custodian, the first respondent, were originally mortgaged by the second respondent with the secured lenders,

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including the petitioner Bank for availing loan. The second respondent has also executed equitable mortgage and hence, the properties are covered under the mortgage. Now, if the properties are allowed to be sold as per the attachment order passed by the Special Court, Mumbai, all the rights of the petitioner would be jeopardised. At this juncture, it is pertinent to point out that the first respondent is actually the custodian, who is acting pursuant to the order of the Special Court. It is not in controversy that the attachment order has been passed in respect of the properties in question by the Special Court and pursuant to the orders of that court, the properties are brought for sale by the first respondent Custodian, who was also appointed by the Special Court. Under these circumstances, so long as the orders of attachment and the sale made by the Special Court are in force, no question of passing any order, stopping the sale would arise. Apart from that, as rightly pointed out by the learned counsel for first respondent, this court has no jurisdiction to pass any order. Since the order of attachment was made by the Special Court, Mumbai, this court cannot entertain such a writ petition or grant the relief. If really the petitioner is aggrieved, he can move the Special Court for necessary relief. The petitioner is at liberty to move the Special Court for necessary relief. With the above observation, this writ petition is disposed of. No costs. Consequently, the connected MPs are closed.

vvk

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.The Custodian,
Office of the Custodian
Special Court (TORTS) Act, 1992,
Banking Division,
Department of Economic Affairs,
Ministry of Finance,Government of India,
3rd Floor, Bank of Baroda Bhavan,
16,Parliament Street, New Delhi-110 001.

2.State Bank of India,
Stressed Asset Management Branch,
5th Floor,
New No.157-A, Anna Salai,
Chennai-600 002.

+ 1 cc to Mr.V.Perumal Advocate SR.NO.60301
+ 1 cc to Mr.A.S.Vijayaraghavan Advocate SR.NO.60609

TEJ(CO)
RD 5.10.07

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